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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/581,010

02/16/2007

Maria Gross

3706

6838

278

7590

03/03/2011

MICHAEL J. STRIKER
103 EAST NECK ROAD
HUNTINGTON, NY 11743

EXAMINER

BOMBERG, KENNETH

ART UNIT

PAPER NUMBER

3754

NOTIFICATION DATE

DELIVERY MODE

03/03/2011

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

striker@strikerlaw.com

Office Action Summary	Application No. 10/581,010	Applicant(s) GROSS ET AL.	
	Examiner KENNETH BOMBERG	Art Unit 3754	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 December 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4 and 6 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4 and 6 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06 October 2010 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Drawings

1. Replacement drawings (Fig. 1 of 5 and Fig. 2 of 5) were received on October 6, 2010; these drawings overcome the new matter objection to the May 24, 2010 replacement drawings.
2. The drawings filed on October 6, 2010 (which appear to be the same as those of May 30, 2006) are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the:

Structure described in claims 1 and 2 as “a resilient stem” (while the valve stem 8 is depicted per se, it being “resilient” is not).

Must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will

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be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

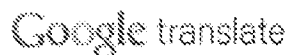
3. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required:

In Reference to Claims 1 and 2

While the phrase “a resilient stem” finds literal antecedent basis in the specification (upon applicant’s October 6, 2010 amendment to correct a translational error), it does not find clear support or antecedent basis in the description so that the meaning of this phrase in the claims may be ascertainable by reference to the description. The depiction of the valve stem in Figs. 1 and 3 suggest that the valve stem is not “resilient” since upon actuation depicted in Fig. 3, the valve stem (8) tips rather than bends. If the valve stem were resilient and consequently bended, upon actuation foam head (1) as depicted in Fig. 3, the valve stem base would remain relatively stationary while the upper end would bend, and the valve would not actuate. Based on applicant’s remarks, the depiction in Figs. 1 and 3 taken in context of the specification, and the examiners knowledge of the construction of similar valves, the valve stem (8) would appear to be --resiliently biased-- rather than “resilient”. The examiners position is also supported by a Google translation of the German priority document corresponding to the portion of the paragraph spanning pages 3-4 in the specification. Specifically the

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sentence in the specification “The restoring force after the actuation of the actuation button 6 for applying a partial amount of foam is provided by the spring-elastic valve stem 8.” Translates as “The restoring force in the operation of the operating button 6 for applying a foam portion is given by the spring-loaded valve 8.”



Try a new browser with automatic translation.



From: German - detected To: English Translate

Die Rückstellkraft nach der Betätigung der Betätigungstaste 6 zum Applizieren einer Schaumteilmenge ist durch den federbeaufschlagten Ventilstern 8 gegeben.

German to English translation

The restoring force in the operation of the operating button 6 for applying a foam portion is given by the spring-loaded valve 8.

The operation of the valve would appear to be similar to that described in US Patent No. 3,095,122 to Lewiecki et al. in col. 2, lines 57-67. As the Examiner is not knowledgeable in the German language, Applicant should independently verify if the Examiner's position is correct.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 1-4, and 6 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

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In Reference to Claim 1

The preamble recites a “foam head (1) **for a propellant container (2)**”, the foam head has been disclosed as being the structure (1) depicted in Figs. 5-6 (see brief description of the drawings) and that it “can be actuated and remains joined to the propellant container 2” (specification page 2, lines 29-31). The body of the claim subsequently recites the “foam head” comprising the valve plate (5) and the valve stem (8). In light of the discrepancy between the specification’s characterization of what comprises the “foam head” and that of the claims, the claim recitation is not clearly understood when read in light of the specification.

In line 4, it is unclear to which previous structure(s) “and having an axis” makes reference. Also it is unclear to which imaginary line “axis” makes reference as no reference coordinate system has been specified.

In line 5, “located at one side of said axis” is not understood within the context of the claim; as the “axis” has not been defined, it is unclear where “one side of said axis” is located.

In line 6, “a foam dispensing opening (7) seated directly on the valve stem (8)” is not clearly understood as read in light of the specification. Specifically, the foam dispensing opening (7) as disclosed in conjunction with figures 1, 5-9, and 11 is located at the top region of the foam head (1) and is separated from the valve stem by a vertical passage of the foam head (1). Consequently, read in light of the disclosure, the dispensing opening (7) would not be fairly characterized as being “seated directly on the valve stem” and the relationship is therefore not clearly understood.

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In line 7, it is unclear what structures would or would not comprise “a resilient valve stem”. The specification does not adequately describe the structure to understand how the phrase “resilient” limits the valve stem or what valve stems would or would not be encompassed as “resilient”. As discussed above in the objection to the specification, it appears that the valve stem provides a resilient bias rather than actually being resilient itself.

In line 16, the recitation of “located exclusively substantially in an area of said axis” is not understood. As the “axis” has not been defined it is unclear where “an area of said axis” is located, further as “area” is a relative term which has not been defined, it is unclear what region would or would not meet this requirement. The use of the term “substantially” within the context of this recitation creates further ambiguity as to the boundaries of the “area”.

In lines 17-18, within the context of the claim it is unclear if “and forming an annular spring” is intended as a functional recitation which describes the intended purpose of the “at least one recess” or is intended to positively recite the “annular spring”.

In Reference to Claim 2

In line 4, it is unclear to which previous structure(s) “and having an axis” makes reference. Also it is unclear to which imaginary line “axis” makes reference as no reference coordinate system has been specified.

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In line 5, “located at one side of said axis” is not understood within the context of the claim; as the “axis” has not been defined, it is unclear where “one side of said axis” is located.

In line 6, “a foam dispensing opening (7) seated directly on the valve stem (8)” is not clearly understood as read in light of the specification. Specifically, the foam dispensing opening (7) as disclosed in conjunction with figures 1, 5-9, and 11 is located at the top region of the foam head (1) and is separated from the valve stem by a vertical passage of the foam head (1). Consequently, read in light of the disclosure, the dispensing opening (7) would not be fairly characterized as being “seated directly on the valve stem” and the relationship is therefore not clearly understood.

In line 7, it is unclear what structures would or would not comprise “a resilient valve stem”. The specification does not adequately describe the structure to understand how the phrase “resilient” limits the valve stem or what valve stems would or would not be encompassed as “resilient”. As discussed above in the objection to the specification, it appears that the valve stem provides a resilient bias rather than actually being resilient itself.

In line 16, the recitation of “located exclusively substantially in an area of said axis” is not understood. As the “axis” has not been defined it is unclear where “an area of said axis” is located, further as “area” is a relative term which has not been defined, it is unclear what region would or would not meet this requirement. The use of the term “substantially” within the context of this recitation creates further ambiguity as to the boundaries of the “area”.

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In lines 17-18, within the context of the claim it is unclear if “and forming an annular spring” is intended as a functional recitation which describes the intended purpose of the “at least one recess” or is intended to positively recite the “annular spring”.

In Reference to Claim 4

The phrases “is embodied as slip-proof” renders the claim indefinite read in light of the specification. The recitation of “is embodied as slip-proof” is not defined by the claim, the specification does not provide an explanation of what constitutes this configuration, and one of ordinary skill in the art would not be reasonably apprised of what configurations would or would not meet this recitation.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later

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invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

8. Claims 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent No. 3,096,002 to Focht (Focht) in view of US Patent No. 3,865,283 to Hayes (Hayes).

In Reference to Claim 1

Focht teaches:

A foam head (“dispensing head”; col. 2, lines 13-25; Figs. 2-3) for a propellant container (Figs. 1 and 4;1), comprising:

a valve plate (2) having inner and outer crimped edges (Figs. 1 and 4), and a valve stem (5) supported on the valve plate (2) and having an axis (running through center axially along passage of valve stem);

an actuation button (12) located at one side of said axis (right side in Figs. 1-3);

a foam dispensing opening (10), seated directly on the valve stem (5) (to the extend that applicant’s dispensing opening is seated directly on the valve stem, so to is Focht), wherein said valve stem is a resilient valve stem (col. 2, line 56), wherein said valve stem (5) is configured to apply a resorting force (col. 2, lines 55-60) after actuation of said actuation button (12) for applying a partial amount of foam;

a lower portion (Figs. 1 & 4; below boss 8 above cup 2) having an outer diameter approximately equal to an inner diameter of the inner crimped edge (see Figs. 1 and 4, the diameters are “approximately equal”);

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an outer rib (Figs. 1 and 4; 7) disposed in a lower region of the lower portion, diametrically opposite the actuation button (12) at one opposite side of said axis (left side in Figs. 1-3) for engagement from beneath of a lower side of the inner crimped edge (see Figs. 1 and 4),

Focht does not teach the following structures taught by Hayes:

wherein a lower peripheral region (Fig. 6; skirt portion 52b adjacent nibs / beads 54b) of the lower portion has at least one recess (Fig. 6; 55) located exclusively substantially in an area of said axis (to the extent that applicants recess is located in "an area of said axis" so to is that of Hays) forming an annular spring which provides an effective restoration force to foam head during operation, wherein said foam head is configured, such that upon actuation of said foam head, said foam head remains joined to said propellant container and is incapable of undesired removal from said propellant container (col. 4, line 67 to col. line 22).

It would have been obvious to one having ordinary skill in the art at the time of the invention to have included the teaching of Hays to incorporate at least one recess in the lower peripheral region of the skirt (13) of Focht in order to permit inward yielding of the skirt during assemblage to the container while maintaining the dispensing head on the container during use as taught by Hayes (col. 4, line 67 to col. 5, line 11). When Focht is modified by the teaching of Hays, the included slots would be located on the skirt (13) portions diametrically between the actuation button (12) and the outer rib (7) since the desired flexing movement toward each other to facilitate assemblage would be best achieved by that location.

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9. Claims 2-4, and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent No. 3,096,002 to Focht (Focht) in view of US Patent No. 3,865,283 to Hayes (Hayes) and US Patent No. 3,156,382 to Michell (Michell).

In Reference to Claim 2

Focht teaches:

A foam head (“dispensing head”; col. 2, lines 13-25; Figs. 2-3) having a propellant container (Figs. 1 and 4;1), comprising:

a valve plate (2) having an inner and outer crimped edges (Figs. 1 and 4) and a valve stem (5) supported by the valve plate (2) and having an axis (running through center axially along passage of valve stem);

an actuation button (12) located at one side of said axis (right side in Figs. 1-3);

a foam dispensing opening (10), seated directly on a valve stem (5) (to the extend that applicant’s dispensing opening is seated directly on the valve stem, so to is Focht), wherein said valve stem is a resilient valve stem (col. 2, line 56), wherein said valve stem (5) is configured to apply a resorting force (col. 2, lines 55-60) after actuation of said actuation button (12) for applying a partial amount of foam;

a lower portion (Figs. 1 & 4; below boss 8 above cup 2) having an outer diameter approximately equal to an inner diameter of the inner crimped edge (see Figs. 1 and 4, the diameters are “approximately equal”);

an outer rib (Figs. 1 and 4; 7) disposed in a lower region of the lower portion, diametrically opposite the actuation button (12) at one opposite side of said axis (left side

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in Figs. 1-3) for engagement from beneath of a lower side of the inner crimped edge (see Figs. 1 and 4),

Focht does not teach the following structures taught by Hayes:

wherein a lower peripheral region (Fig. 6; skirt portion 52b adjacent nibs / beads 54b) of the lower portion has at least one recess (Fig. 6; 55) located exclusively substantially in an area of said axis (to the extent that applicants recess is located in "an area of said axis" so to is that of Hays) and forming an annular spring which provides an effective restoration force to foam head during operation, wherein said foam head is configured, such that upon actuation of said foam head, said foam head remains joined to said propellant container and is incapable of undesired removal from said propellant container (col. 4, line 67 to col. line 22).

Focht does not teach the following structures taught by Michell:

a sleeve (11; Figs. 1-4) sheathing at least the upper region (19) of the propellant container (10), wherein the outer crimped edge (of mounting cup 12) is a connecting seat of said sleeve (col. 2, lines 27-33).

It would have been obvious to one having ordinary skill in the art at the time of the invention to have included the teaching of Hays to incorporate at least one recess in the lower peripheral region of the skirt (13) of Focht in order to permit inward yielding of the skirt during assemblage to the container while maintaining the dispensing head on the container during use as taught by Hayes (col. 4, line 67 to col. 5, line 11). When Focht is modified by the teaching of Hays, the included slots would be located on the skirt (13) portions diametrically between the

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actuation button (12) and the outer rib (7) since the desired flexing movement toward each other to facilitate assemblage would be best achieved by that location.

It would have also been obvious to one having ordinary skill in the art at the time of the invention to have incorporated the sleeve teaching of Michell into the foam head and propellant container of Focht as modified by Hayes in order to facilitate the inclusion of a desired over cap as explicitly taught by Michell (see col. 1, lines 26-53).

In Reference to Claim 3

The sleeve taught by Michell is a “graspable part” (see Figs. 1-4).

In Reference to Claim 4

The specification has not identified any particular structural features that provides the “graspable part is embodied as slip-proof” and has not provided any standard by which the “graspable part is embodied as slip-proof” can be ascertained. Consequently to the extent that applicants device as claimed is slip proof, the sleeve of Michell as applied to the device of Focht as modified by Hayes is considered “graspable part is embodied as slip-proof”. Further as providing various configurations to create a “slip-proof” surfaces is well known in the art, it would have been obvious to one having ordinary skill in the art at the time of the invention to have included a “slip-proof” configuration to improve the handling of the device.

In Reference to Claim 6

Michell teaches an upper part of the sleeve (11) is provided with a clamping bead (35, 36; col. 3, lines 26-32) for mounting a guard cap (13) in such a way that it can be released again, and the outer diameter of the clamping bead (36; Fig. 5) is equal to the

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outer diameter of the crimped edge (outside of mounting cup 12; Figs. 5-6). When Focht as modified by Hayes is further modified by Michell, to include the sleeve and guard cap, the resulting device meets the claim. Michell further teaches that the sleeve (collar 11) permits the mounting of a desired size over cap (col. 1, lines 41-52).

Response to Arguments

10. Applicant's arguments filed October 6 and December 1, 2010 have been fully considered but they are not persuasive.

Applicant's amendment has overcome the previous new matter objection of claim to the drawings.

The restoration of the drawing as originally filed along with the amendment to the claims replacing "spring-elastic valve stem" to "resilient valve stem" has resulted in an objection to the drawings as not showing the "resilient valve stem". As discussed above, these issues appear to be the result of a further mistranslation of the specification. Based on the Google translation noted above, the drawings and specification, the applicant's arguments, and the Examiners understanding of the operation of similar valves (as exemplified by newly cited US Patent No. 3,095,122 to Lewiecki et al.), the valve of applicants invention is spring-loaded or resiliently biased (per Google translation: "The restoring force in the operation of the operating button 6 for applying a foam portion is given by the spring-loaded valve 8.") rather than being "resilient".

Applicant's arguments with respect to rejection of the claims, based on the Examiner's position that the inconsistency between the specification description of the foam head and that of claims 1-2 results in the claims being indefinite, is acknowledged. Contrary to applicant's

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arguments, the description on page 2, lines 29-31 does not support their position. The foam head (1) is clearly described in the specification as being a distinct part which is connected to the valve plate (5), by way of example on page 3, the specification describes:

FIG. 7, the foam head of FIG. 6 in a view from below;

FIGS. 8 and 9, in different perspective views, the foam head of FIG. 6;

FIG. 10, in an axial sectional view, a propellant container without a foam head.

Applicants claim recitations and associated argument that the valve plate and valve stem is part of the foam head, is opposite to that of the specification. As the claims must be read in light of the specification, the inconsistency necessitates maintaining the rejection under 35 USC 112, second paragraph. Applicant's can not argue clarity into the claims, the claims must be clear when read in light of the specification and the claims require appropriate amendment to correct the inconsistency.

The applicant's arguments with respect to the foam dispensing opening (7) is acknowledged. Applicant's arguments explain that the opening (7) is not intended to make reference to the opening at the upper end of the foam head (1) as consistently depicted in Figs. 1, 5, 6, 8, 9, and but rather is to be interpreted more broadly as "An open space serving as a passage or gap". However according to page 3 of the specification:

FIG. 5 shows a foam head of FIG. 1 by itself; it has a receptacle 23 for the valve stem 8. Thus it is the receptacle (23) which seats on the valve stem and not the opening. The specification section on page 2, lines 21-22 referenced by the applicant appears to state that the foam head (1) is seatable directly on the valve stem and not the foam dispensing opening.

With respect to the arguments related to the art based rejections, the arguments are not convincing as they are based on incorrect analysis of the references and the rejection. In describing Hayes, applicant notes that Hayes discloses a gap (57) provided for safety reasons and erroneously concludes that “During operation, this gap 57 prevents any force from being exerted on the skirt having the slots”. A careful reading of the paragraph of Hayes spanning col. 4, line 62 to column 5, line 22 in conjunction with Fig. 6 reveals a different configuration than suggested by applicant. Hayes states: “It will be noted that a clearance space 57 exists between the beads 54b and the upper portion of the wall 28b when the cap is in the raised, non-discharging position. This is a safety feature, preventing advertent opening or leaking of the valve. The same clearance is seen to exist in FIG. 2, showing the closed condition of the cap 30a.” [emphasis added]. Thus Hayes makes reference to a vertical gap (57) between the upper portion of wall (28b) and the beads (54b); this prevents the cap (30b) from pressing down on the valve stem (24) when “in the raised, non-discharging position”. As this is a vertical gap between the beads (54b) and the upper portion of wall (28b) rather than a horizontal gap, Hayes's gap (57) has no relevance to “the lower portion having an outer diameter approximately equal to an inner diameter of the crimped edge” and “an annular spring which provides an effective restoration force to the foam head during operation” as called for in claims 1 and 2, and which is essentially argued by applicant. In applying the teaching of Hayes to Focht, if any vertical gap between the outer diameter of the foam head and inner diameter of the crimped edge were present, it would have to be kept to a minimum to allow the cap to be maintained on the cup to fulfill the cap retaining desire of Hayes.

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The modification of Focht is for the purpose of “retaining the cap and limiting the movement thereof” (col. 5, lines 14-16) while allowing the skirt to “yield inwardly during assemblage to the container” (col. 5, line 1) as explicitly taught by Hayes. The modification Focht is therefor not based impermissible hindsight as contended by applicant, but rather from the explicit suggestion of Hayes. The fact that the reasoning used to combine the references to arrive at the same product as applicant’s is different than applicant’s reasoning is irrelevant. Applicant's claims are directed to a product rather than a process, while applicant may chose to describe their product by it's functional characteristics rather than is structural characteristics, it is the product and not its function which must be differentiated from the prior art. In the instant case, when Focht is modified by the teaching of Hayes, the resulting product will be the same as that claimed by applicant and would operate in accordance with the functional recitations of the claims.

With respect to applicants discussion of Abplanalp, this reference was included because of the general valve construction and because it was cited by Focht but dose not form a basis for the rejection. Focht explicitly states of using a “valve of any appropriate kind” (col. 2, line 1). Lewiecki et al. has been cited as it teaches a similar valve to that of applicant’s which can be operated by being depressed or tilted (col. 2, lines 57-67).

Conclusion

11. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to KENNETH BOMBERG whose telephone number is (571)272-4922. The examiner can normally be reached on Monday-Thursday and alternative Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin P. Shaver can be reached on (571)272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

13. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would

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like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

KB

/Kenneth Bomberg/

Primary Examiner, Art Unit 3754